IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 21ST DECEMBER 2006 / 30TH AGRAHAYANA 1928

CRL.A.No. 1680 of 2003(C)

SC.156/1998 of ADDL. SESSIONS COURT (ADHOC), KOLLAM

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APPELLANT: APPELLANT/ACCUSED.

JAYADEVAN, S/O.NEELAKANTAN,
KOCHUTHUNDIL, PULIKULAM, SOORANADU NORTH.

BY ADV. SRI.DILEEP P.PILLAI

RESPONDENTS: COMPLAINANT.

STATE OF KERALA REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P.SRI.C.M. NAZAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 21/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN, J.

CRL.A.NO.1680 OF 2003-C

Dated this the 21st day of December, 2006.

JUDGMENT

The appellant, accused in S.C.No.156/1998 faced trial for an offence punishable under Section 55(a) of the Abkari Act. The allegation against the appellant is that he was found in possession of 6 liters of arrack in a can having the capacity of 20 liters on 14.6.1997 at about 8.30 p.m on a culvert of the panchayath road from Alummoodu junction to Parakkadavu in Sooranadu north village, without having any authority under the provisions of the Abkari Act. To prove the case against the appellant, the prosecution examined Pws 1 to 5 and produced Exts.P1 to P4. Mos 1 and 2 were also produced. After the closing of the prosecution evidence, the appellant was questioned under Section 313 of the Cr.P.C. The appellant denied the charges levelled against him. Relying on the evidence adduced by the prosecution, the trial court found the appellant guilty under Section 55 (a) of the Abkari Act and he was convicted thereunder and sentenced to undergo R.I for five years and to pay a fine of Rs. One lakh and in default of

payment of the fine, a further period of one year S.I was also ordered under Section 55 (1). The above conviction and sentence ordered against the appellant are assailed in the appeal.

2. This Court heard the learned counsel appearing for the appellant as well as the Public Prosecutor. The learned counsel appearing for the appellant submits that the lower court committed serious error in placing reliance on the prosecution witnesses, who are only departmental officers, as the independent witnesses Pws 1 and 2 were not supporting the prosecution case at all. Further the counsel submits that the trial court had committed serious error in accepting the evidence of Pws 2 to 5 with regard to the seizure of the contraband article, taking of the samples and sending the same for analysis as the officers are not followed the procedure prescribed under the provisions of the Abkari act and the Excise Manuel. Lastly, the counsel submits that the sentence awarded against the appellant is excessive. The prosecution tried to establish its case through the evidence of Pws 2,3,4 and 5 out of whom PW5 is the Sub Inspector of Police, Sooranadu

Police Station, who had given evidence before the court that on 14.6.1997 at about 15 p.m while himself and Pws 3 and 4 reached at the place Mattathu junction, they have seen the appellant on a culvert selling the arrack and the appellant is having 20 liters capacity can with him which contained 6 liters of arrack. When seeing the police party, the appellant tried to get away from the scene, however, he was stopped by PW5 and questioned the appellant. On questioning, it is admitted by the appellant that the can contains arrack which is brought for sale. PW5 had further stated that when he questioned the appellant he had admitted that the can contains arrack and on preparing Ext.P1 seizure mahazar in the presence of Pws 1 and 2, the MO1 can was seized and PW5 had taken two samples from the can and the samples and MO1 can were sealed and labelled in the presence of the appellant as well as the witnesses. Further PW5 had stated that the appellant was arrested from the spot and thereafter the appellant, the contraband article and the sample were produced before the court on 16.6.1997 itself by preparing Ext.P3 property list and thereafter the contraband articles were kept in the police station and subsequently, the same was produced before the court.

PW5 had further stated that the samples were already taken from the scene itself and subsequently from the magistrate court. Further the sample was taken and sent for chemical analysis and got Ext.P4 chemical report. This witness has further stated that as per Ext.P4 chemical report the sample contained 49.51% and 50.05% ethyl alcohol by volume. This witness has further stated that final charge against the appellant was laid. Evidence of PW5 is further corroborated by that of Pws 3 and 4. PW3 had given evidence before the court that he had accompanied PW5 while PW5 was on patrol duty on 14..6.1997. This witness has further stated that PW5 had seized MO1 and had taken sample and the appellant was arrested at the spot. The evidence of PW3 is further corroborated by that of PW4, who also given evidence before the court in support of the prosecution case. PW4 had also stated that he accompanied PW5 at the time of detection of the crime and this witness had fully supported the evidence of both Pws 3 and 5. The trial court relied on the evidence of these witnesses and found that the appellant guilty of the offence as charged. Further the trial court had considered the evidence of the prosecution. On considering the entire prosecution evidence, this Court is of the

view that the contention raised by the counsel appearing for the appellant that the trial court had committed serious error in placing reliance of the evidence of official witness as the independent witness have not supported the prosecution case, is not tenable. This Court had considered the evidence of Pws 1 and 2 also who had given evidence before the court that they have signed Ext.P1 seizure mahazar. Though they are not supporting the prosecution case as such, they admit their signatures. In the above circumstances, the duty castes on the official witness namely PW5 has been discharged by calling two independent witnesses to watch the seizure, taking of the sample and other actions he had done at the scene. Hence, this Court see that the trial court is fully justified in placing reliance on the evidence of Pws 3, 4 and 5 and also on Exts.P3 and P4 to find the appellant guilty of the offence. Hence, the findings entered by the trial court require no interference by this Court. Accordingly, the findings are hereby confirmed. The next question to be considered is whether the sentence awarded against the appellant is excessive or not. In this contest it has to be noted that the trial court had already considered the issue and came to the conclusion that the offences have been

proved and the provision of the Abkari Act is for prevention of such social evils. Accordingly, the appellant was sentenced to undergo five years R.I. However, this Court is of the view that though the appellant is charged under Section 55(a) for possession of arrack and found selling the same on a culvert, for which no evidence has been adduced by the prosecution.

3. Taking into consideration all these facts, this Court is inclined to reduce the imprisonment awarded against the appellant to 3 years R.I under Section 55(i) and the sentence for default of payment of fine shall also be reduced to S.I for six months.

With the above modification of sentence, this appeal stands dismissed in all other respects.

K. THANKAPPAN, JUDGE.

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